

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Billed Party Preference for
0+ InterLATA Calls

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CC Docket No. 92-77

**REPLY COMMENTS OF
CITIZENS UNITED FOR REHABILITATION OF ERRANTS**

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REHABILITATION OF ERRANTS**

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August 16, 1996

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**REPLY COMMENTS OF
CITIZENS UNITED FOR REHABILITATION OF ERRANTS**

Citizens United For Rehabilitation of Errants ("C.U.R.E."), by its attorneys, hereby respectfully submits these Reply Comments in response to the Commission's Second Further Notice of Proposed Rulemaking in the above-captioned proceeding on the issue of whether there exist alternatives to billed party preference ("BPP") that could be applied to remedy the high cost of calls originating from inmate-only telephones at correctional institutions.^{1/}

INTRODUCTION

In its Comments, C.U.R.E. reiterated its concern that the families and friends of inmates are being forced to pay oppressive rates and charges to receive collect calls from

^{1/} In the Matter of Billed Party Preference for InterLata O+ Calls, CC Docket No. 92-77, Second Further Notice of Proposed Rulemaking, FCC 96-253, released June 6, 1996 ("Second Further NPRM").

loved ones in correctional institutions.^{2/} C.U.R.E. also expressed its continuing support for BPP as the best means of promoting reduced rates and improved services for inmate-phone ratepayers, but acknowledged that the issue of BPP will be given further consideration in relation to the implementation of number portability.^{3/} Thus, to ensure that inmate families and friends would not continue to suffer from oppressive rates prior to the advent of BPP, C.U.R.E. urged the Commission to implement mandatory, self-executing rate-caps and other operational measures as interim alternatives to BPP.

DISCUSSION

The concept of mandatory rate restrictions has been embraced by several major providers of inmate telecommunications services, including a national coalition of companies that provide inmate calling services.^{4/} Several commenters, however, have suggested that FCC imposed rate restrictions are not necessary because ceilings have already been imposed by many states. Indeed, one provider of inmate services has suggested that if the FCC adopts a uniform nationwide rate benchmark as an alternative to BPP, it should do so not for the purpose of protecting inmate-telephone ratepayers against excessive rates, but rather to

^{2/} See Comments of Citizens United For Rehabilitation of Errants on Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, (filed July 16, 1995).

^{3/} C.U.R.E. Comments at 5.

^{4/} See, e.g., Comments of Gateway Technologies, Inc. on Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (dated July 17, 1996) ("Gateway"); Comments of Inmate Calling Services Providers Coalition, CC Docket No. 92-77 (dated July 17, 1996) (the "Coalition").

enhance inmate OPS revenues by "prohibiting states from imposing rate ceilings for intrastate calls, including local, that fall below the interstate benchmark rate."^{5/}

In view of the foregoing comments, C.U.R.E. has become concerned that under the guise of rate reform, some inmate OSPs may be seeking to use this proceeding to establish an excessive FCC imposed rate "ceiling" that could be used to argue at the state level that any lower intrastate rate restrictions are either preempted by federal regulation or should be adjusted upwards to reflect the uniform national rate. Plainly, either result would be antithetical to the goal of reducing the oppressive rates and charges faced by the recipients of collect calls from correctional facilities.

Prompted by these concerns, C.U.R.E. has conducted a series of informal telephone interviews with state regulators to ascertain the prevalence and scope of inmate calling services rate restrictions among the various states.^{6/} Attached hereto as Exhibit 1 is a summary of the results.^{7/} Of the twenty-eight states from which C.U.R.E. was able to gather information prior to the date of this Reply, eight did not currently have in place any

^{5/} See Comments of Invision Telecom, Inc. to Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (filed July 17, 1996) ("Invision Comments") at 10.

^{6/} In stark contrast, not one of the inmate OSPs who are seeking a special exemption from BPP has sought to assist the Commission by providing specific information regarding the status of rate protections that have been imposed by the states. In view of the fact that many of those companies operate nationally and, indeed, some are participating as part of a national coalition, C.U.R.E. assumes that this information could have been gathered readily by those companies, each of whom have resources vastly superior to those available to C.U.R.E.

^{7/} C.U.R.E. is still receiving information from its state contacts, and will supplement the attached summary as appropriate. Unfortunately, given C.U.R.E.'s limited resources and the relatively short amount of time available before the instant Reply Comments were due, C.U.R.E. was unable to contact regulatory officials from all fifty states.

restrictions on inmate telephone rates. Twenty of the states were identified as having some form of rate restriction on all intrastate, interLata collect calling rates, including prison telephones. Of the twenty states with some form of rate restriction, nine appear to have capped their intrastate, intraLata collect-calling rates at those of AT&T.^{8/} Two of the states, both within single latas, cap their rates at those of the incumbent local exchange carrier. Five of the states impose rate caps according to state specific formulas.

In addition to rate caps, the Public Utilities Commission in at least one of the states, Minnesota, has imposed other operating requirements on alternative operator service providers engaged in the provision of inmate-only service.^{9/} These requirements include: 1) an obligation to file and update tariffs or price lists, 2) a duty to audibly and distinctly state their identity at the beginning of each call, with a second identification before connecting the call or before a charge is incurred by the end-user, 3) an obligation to bill the end-user within 90 days of the date of the call, 4) a duty to submit sample bills for review by the Department, 5) an obligation to refrain from billing charges for unanswered calls, and 6) an obligation to provide end-users information regarding rates to the extent technologically feasible.

When considering the issue of state imposed rate caps, it is important to bear in mind that these rate restrictions, to the extent they actually provide any protections, are only applicable to rates associated with intrastate calls; they do not afford any protection from excessive rates associated with long distance calls from state to state. Indeed, Invision has

^{8/} As explained in the attached summary, C.U.R.E. does not believe that these states draw any distinction between AT&T's standard collect calling rates and its specialized rates for inmate calling services.

^{9/} See Orders attached hereto as Exhibits 2 and 3.

admitted that "[h]istorically, in an effort to balance the negative effect of unfair intrastate rate caps, inmate telephone service providers may have been forced to increase their interstate rates in order to stay in business."^{10/} Stated another way, some inmate OSPs charge even more excessive rates for interstate calling services because they are prohibited from doing so by state restrictions on intrastate calling rates. The imposition of a rate-cap in this proceeding would correct this disparity.

Finally, to correct any misimpression that may have been caused by the comments of Gateway,^{11/} C.U.R.E. has not endorsed Gateway's rate-cap proposal as a viable alternative to BPP. Rather, C.U.R.E. has endorsed the concept of a rate cap as an interim alternative to BPP, in the hope that swift Commission action will bring rate relief while BPP is given further consideration. C.U.R.E. is presently assessing the rate restrictions that have been imposed by the various states, and will be developing a specific proposal for the Commission's consideration. C.U.R.E. presently expects that this proposal will incorporate various attributes from rate-restrictions imposed by the various states, including specific restrictions on operator surcharges (which often constitute the bulk of the charge to the end-user, particularly when several calls are placed in secession) and restrictions the operator's ability to pass through commission payments, which needlessly drive up rates. Significantly, rate restrictions imposed by the various states do not seemed to have damped inmate OSP competition, despite the fact that the vast majority of most calling traffic is intrastate. C.U.R.E. does not expect that a rate-ceiling in this proceeding would dampen competition either.

^{10/} Invasion Comments at 8.

^{11/} Gateway Comments at 8.

CONCLUSION

In considering the issue of establishing a uniform national rate-cap for Interlata, Interstate inmate-telephone rates, C.U.R.E. urges the Commission to make clear that it is not preempting state rate-restrictions that may be lower than the national rate, and that states should not view the national cap as an invitation to raise state rates. C.U.R.E. looks forward to working with the Commission to fashion a self-enforcing rate-cap that will help to reign in the oppressively high cost of inmate-telephone rates.

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August 16, 1996

**SUMMARY OF STATE SURVEY REGARDING RATE RESTRICTIONS
ON INTERLATA, INTRASTATE INMATE TELEPHONE RATES**

SUMMARY OF STATE SURVEY REGARDING RATE RESTRICTIONS ON INTERLATA, INTRASTATE INMATE TELEPHONE RATES

Summarized below are the results of telephone interviews that were conducted with regulatory officials from twenty-eight (28) states during the first two weeks of August 1996. These interviews sought to determine whether or not the states place any restrictions on the rates charged for interLATA, intrastate collect calls placed from inmate-only telephones located in correctional institutions.

Of the twenty-eight states from which we were able to obtain information during the two week period, no intrastate rate restrictions are currently in effect in eight states: Delaware, Hawaii, Nebraska, North Dakota, South Dakota, Utah, Virginia and Texas. Virginia is about to conduct a study to see if implementation of such a rate cap would be warranted under the Telecommunications Act of 1996. Texas is presently considering the imposition of rate restrictions due to recent legislation.^{1/}

Twenty of the twenty-eight states from whom we were able to obtain information have rate caps in place for intrastate, long distance calls. These restrictions generally are set either at the rates charged by AT&T or at a rate tied to a state-specific formula.

Nine of the twenty-eight states (Alabama, Georgia, Maryland, Massachusetts, Minnesota, Missouri, North Carolina, South Carolina and Tennessee) cap their interLATA, interstate inmate payphone rates (usage rates + all applicable surcharges) at the rates of AT&T.^{2/} Vermont and New Hampshire, two single-LATA states, cap their intrastate rates at the NYNEX rates. Wisconsin sets the rate cap at what C.U.R.E. understands to be an

^{1/} The Texas legislature implemented a new law in 1995 which appears to have changed how inmate payphone services should be conducted in Texas. The state currently is considering whether the new statute does in fact require it to place rate caps on the inmate payphones.

^{2/} C.U.R.E. was unable to determine whether these states recognize any distinction between AT&T's standard rates for ordinary payphone services and its specialized rates for inmate calling services. However, many of the state contacts indicated that inmate-telephone rates are capped at the same rates as ordinary public payphones. Moreover, C.U.R.E. assumes that AT&T does not provide inmate services in some of these states, thereby leading it to believe that a rate restriction in those states would not be tied to AT&T's rates for inmate calling services, as it does on all other payphones. The comments filed by Invision support this assumption. See Comments of Invision Telecomm., Inc. to Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77 (dated July 17, 1996) at 8.

average of the rates charged by Ameritech and AT&T.^{3/} Surcharges for these states run from a high of \$1.75 in Alabama to a low of zero in South Carolina and Maryland, where subscriber surcharges are not allowed.

Five states (Colorado, Florida, Louisiana, Michigan and Ohio) impose rate caps on all payphone providers (including inmate telephones), but do so according to state specific formulas. The surcharge maximums in Florida, Louisiana and Colorado range from a high of \$2.10 for a station-to-station collect call and \$3.90 for a person-to-person collect call (Colorado) to a low of \$1.25 in Florida (\$1.00 surcharge + \$.25 set use fee for all completed calls).

In Colorado, the mileage/usage rates are as follows:

0-10	.21 initial	.15 add'l
11-22	.25 initial	.18 add'l
23-55	.34 initial	.22 add'l
56-124	.41 initial	.27 add'l
125-292	.45 initial	.30 add'l
293 +	.49 initial	.33 add'l

A copy of the rule setting the rate cap is on Colorado's web page. Go to www.csn.net/~pucsmith and then to the rule section for CCR 723-18.

In Florida, the usage rate is \$.25 per minute for both intraLATA and interLATA calls, regardless of mileage.

In Louisiana, rates are capped as reflected in the chart attached hereto at Appendix A. These rates, effective March 1, 1994, divide the rates according to day, night & weekend, and evening rates. The surcharges are determined by the type of call.

For Michigan, the maximum charge per call for a collect call is \$5.70; under this system the total of all surcharges and usage rates cannot be more than \$5.70. In Ohio, the maximum charge per call is set at \$2.50.

Information gathered on three states shows that some rate restriction is imposed, but the information provided does not reveal how those restrictions are imposed. Indiana sets its rate cap for alternative operator services (AOS) at the IURCTC7 tariff filed by BellSouth. For resellers, however, there is no rate cap. A prison payphone provider, thus,

^{3/} C.U.R.E. is informed that Wisconsin does not have in affect a specific order that caps inmate telephone rates, but rather that the state employs a company specific application procedure whereby rates are capped at an average of the rates charged by Ameritech and AT&T.

would only be subject to a rate cap under Indiana's system if, due to the services offered, they qualify as an AOS. Oklahoma and Pennsylvania both impose rate restrictions, but we were unable to ascertain the specific rates.

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APPENDIX A
CORRECTIONAL FACILITY CAP FOR OPERATOR SERVICES
ON INTERLATA CALLS IN LOUISIANA

CORRECTIONAL FACILITIES CAP FOR OPERATOR
Rates Effective 1 March 1994

ES INTERLATA

SUMMARY CORRECTIONAL FACILITIES DAY RATES INTERLATA							Effective: March 1, 1994			
MILEAGE BANDS	STATION TO STATION						CALLING CARD		PERSON TO PERSON	
	Collect		Third Number		Operator Handled					
	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes
0 - 10	0.1400	0.1200	0.1400	0.1200	0.1400	0.1200	0.1400	0.1200	0.1400	0.1200
11 - 16	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1500	0.1500	0.1400	0.1400
17 - 22	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500
23 - 30	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1700	0.1700	0.1600	0.1600
31 - 40	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1700	0.1700	0.1600	0.1600
41 - 55	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1900	0.1900	0.1700	0.1700
56 - 70	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000
71 - 100	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000
101 - 124	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000	0.2000
125 - 196	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100
197 - 292	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100	0.2100
293 - +	0.2200	0.2200	0.2200	0.2200	0.2200	0.2200	0.2200	0.2200	0.2200	0.2200

SUMMARY CORR. FAC. NIGHT & WEEKEND RATES INTERLATA						Effective: March 1, 1994					
MILEAGE BANDS	STATION TO STATION						CALLING CARD		PERSON TO PERSON		
	Collect		Third Number		Operator Handled						
	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	
0 - 10	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	
11 - 16	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	0.0900	
17 - 22	0.1050	0.1050	0.1050	0.1050	0.1050	0.1050	0.1050	0.1050	0.1050	0.1050	
23 - 30	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	
31 - 40	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	
41 - 55	0.1200	0.1200	0.1200	0.1200	0.1200	0.1200	0.1300	0.1300	0.1200	0.1200	
56 - 70	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	
71 - 100	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	
101 - 124	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	
125 - 196	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	
197 - 292	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	0.1500	
293 - +	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	

SUMMARY CORRECTIONAL FACILITIES EVENING RATES INTERLATA							Effective: March 1, 1994			
MILEAGE BANDS	STATION TO STATION						CALLING CARD		PERSON TO PERSON	
	Collect		Third Number		Operator Handled					
	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes	Initial Minutes	Each Additional Minutes
0 - 10	0.1120	0.0900	0.1120	0.0900	0.1120	0.0900	0.1120	0.0900	0.1120	0.0900
11 - 16	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120	0.1120
17 - 22	0.1200	0.1200	0.1200	0.1200	0.1200	0.1200	0.1200	0.1200	0.1200	0.1200
23 - 30	0.1280	0.1280	0.1280	0.1280	0.1280	0.1280	0.1400	0.1400	0.1280	0.1280
31 - 40	0.1280	0.1280	0.1280	0.1280	0.1280	0.1280	0.1400	0.1400	0.1280	0.1280
41 - 55	0.1400	0.1400	0.1400	0.1400	0.1400	0.1400	0.1500	0.1500	0.1400	0.1400
56 - 70	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600
71 - 100	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600
101 - 124	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600	0.1600
125 - 196	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700
197 - 292	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700	0.1700
293 - +	0.1800	0.1800	0.1800	0.1800	0.1800	0.1800	0.1800	0.1800	0.1800	0.1800

SUMMARY OF OPERATOR SERVICE CHARGES (SURCHARGES)
INTERLATA (EFFECTIVE: March 1, 1994)

OPERATOR SERVICES	RATE
STATION TO STATION	
Collect	1.9400
Third Number Billed	1.9400
Operator Handled	1.9400
CALLING CARD	0.8000
PERSON TO PERSON	3.5000
VERIFICATION	2.0000
INTERRUPTION	2.0000
OPERATOR ASSIST	1.0000
LOCAL	0.0000
DIRECTORY ASSISTANCE	0.6500

CERTIFICATE OF SERVICE

I, Cynthia Curtis, hereby certify that on this 16th day of August, 1996, a copy of the foregoing was sent by U.S. First Class mail, or hand-delivered (marked by an asterisk), to the following parties:


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